

DEPARTMENT OF STATE
THE DIRECTOR OF INTELLIGENCE AND RESEARCH
WASHINGTON

8 MAR 1983

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March 2, 1983

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MEMORANDUM FOR: Mr. William J. Casey
Director of Central Intelligence

SUBJECT: Monitoring of Third Country Transfer of
Sensitive Military Technology

As you are aware, Section 163 of the Second Joint Resolution appropriating funds for fiscal year 1983 (P.L.97-377) prohibits the use of funds made available by that joint resolution to furnish or facilitate the sale or transfer of sensitive US defense equipment, materials, or technology to any country, unless the President certifies that he has reliable assurances that such countries will not transfer sensitive US equipment, materials, or technology in violation of agreements entered into under the Arms Export Control Act to any communist country, or to any country which receives arms from a communist country. This provision is in addition to existing requirements in the Arms Control Act which cover transfers of defense articles and defense services.

The President has already made the certification of "reliable assurances" with respect to Pakistan (Tab A). The Department of State will shortly seek a Presidential certification that would cover all other countries to which we might transfer sensitive defense equipment (Tab B).

I believe it would be useful to alert the Intelligence Community to this new requirement of law and to ask that within available collection and analytical resources, a careful watch be kept for evidence of unauthorized transfers of US-provided defense equipment, materials, services, and technology. The Intelligence Community is already doing good work in this general area, and I believe that these efforts are widely appreciated. In view of the existence of a new statutory injunction, however, it would be worthwhile to remind both the collectors and the analytical side of the Community of the special obligations that are imposed on us with respect to this subject.

I do not believe that any new mechanism is required since the existing procedures seem to be working reasonably well. I would be grateful, however, if you would bring the new legis-

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lation to the attention of of the Intelligence Community in the manner you consider most appropriate. You may want to consider addressing this issue at an early meeting of the NFIB and, if you wish, I would be happy to speak to the point also.


Hugh Montgomery

Attachments:

Tab A - Presidential Determination
Tab B - Countries Subject to this Determination

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Presidential Determination
No. _____

MEMORANDUM FOR THE HONORABLE GEORGE P. SHULTZ
The Secretary of State

SUBJECT: Presidential Certification with Respect
to Section 163 of P.L. 97-377

Pursuant to the authority vested in me by Section 163 of the second Joint Resolution appropriating funds for fiscal year 1983 (P.L. 97-377), I hereby certify that I have reliable assurances that the countries for which Congress has been informed for this fiscal year of proposed foreign military sales financing or of expected foreign military sales agreements will not transfer sensitive United States equipment, materials, or technology in violation of agreements entered into under the Arms Export Control Act to any communist country, or to any country that receives arms from a communist country.

This certification shall be reported to Congress.

This certification shall be published in the Federal Register.

JUSTIFICATION

Section 163 of the second Joint Resolution appropriating funds for Fiscal Year 1983 (P.L. 97-377) prohibits the use of funds made available by that Joint Resolution to furnish, or facilitate the sale or transfer of, sensitive United States defense equipment, materials or technology to any country, unless the President certifies that he has reliable assurances that such country will not transfer sensitive United States equipment, materials or technology in violation of agreements entered into under the Arms Export Control Act to any communist country, or to any country which receives arms from a communist country.

This provision is in addition to existing requirements in the Arms Export Control Act which govern transfers of defense articles and defense services. Section 3(a) of the AECA requires, as a condition of eligibility to receive defense articles and defense services from the United States Government under the Arms Export Control Act, that all foreign countries, prior to their receiving such articles and services, agree inter alia not to transfer these articles and services to anyone not an officer, employee, or agent of the purchaser without first obtaining the consent of the United States. The United States views these agreements as solemn undertakings.

Furthermore, Section 3(e) of the AECA requires the President to report to the Congress upon receiving information that an unauthorized third-party transfer of defense articles or services has taken place. Section 3(c) of the Act requires that the President report to the Congress upon receiving information that an unauthorized transfer of an article or service furnished under the AECA in "substantial violation" (in terms of quantity or gravity of the consequences) of a governing agreement "may have occurred." Section 3 further provides that the offending country may be rendered ineligible for further FMS financing by Presidential determination or by the adoption of a joint resolution to that effect by the Congress.

In accordance with these requirements, the United States remains alert for evidence of possible unauthorized transfers and diligently follows up on information it receives that would suggest that an unauthorized transfer of such defense articles or defense services may have occurred. A thorough analysis would be undertaken in order to determine whether an unauthorized transfer in fact occurred, and, if so, what response would be appropriate.

In addition, as a matter of long-standing practice and procedures, under the U.S. Conventional Arms Transfer Policy

and the National Policy for the Disclosure of Classified United States Military Information to Foreign Governments and International Organizations, specific policy criteria and considerations must be satisfied on a country-by-country and case-by-case basis before a decision is made to approve any release of sensitive United States defense equipment, materials, or technology.

In complying with section 163 of P.L. 97-377, the situation with respect to Pakistan was previously examined. For this certification, we have reviewed and will continue to review all the countries noted in the fiscal year 1983 congressional presentation document for which an FMS financing program was proposed for fiscal year 1983 or for which foreign military sales agreements were expected to be accepted during fiscal year 1983. This involves a careful examination for each of these countries of the circumstances with respect to its handling of sensitive equipment, materials or technology. In each case, this review includes an assessment of the risks involved and the country's record in protecting U.S. sensitive equipment, materials or technology before transferring a sensitive defense article or defense service.

For this certification, and based on these procedures and the current examinations, it is concluded that the United States possesses reliable assurances that the countries noted in the fiscal year 1983 congressional presentation document for which an FMS financing program is proposed for fiscal year 1983 or for which foreign military sales agreements are expected to be accepted during fiscal year 1983 will not transfer sensitive U.S. equipment, materials or technology in violation of agreements entered into under the Arms Export Control Act to any communist country, or to any country which receives arms from a communist country.

Countries Subject to this Determination

EAST ASIA & PACIFIC

Australia, Burma, Indonesia, Japan, Korea, Malaysia, New Zealand, Philippines, Singapore, Taiwan, Thailand,

NEAR EAST & S. ASIA

Bahrain, Bangladesh, Egypt, India, Israel, Jordan, Kuwait, Lebanon, Morocco, Oman, Pakistan,*Qatar, Saudi Arabia, Tunisia, United Arab Emirates, Yemen Arab Republic.

EUROPE & CANADA

Austria, Belgium, Canada, Denmark, France, Germany, Greece, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, Yugoslavia.

AFRICA

Botswana, Cameroon, Djibouti, Gabon, Ghana, Kenya, Liberia, Madagascar, Niger, Rwanda, Senegal, Somalia, Sudan, Zaire, Zimbabwe.

AMERICAN REPUBLICS

Antigua, Barbados, Brazil, Colombia, Costa Rica, Dominica, Dominican Rep., Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, St. Lucia, St. Vincent & the Grenadines, Uruguay, Venezuela.

Certification
**Previously certified on Jan 3, 1982*

Drafted: L/PM:JThessin:jvw
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EXECUTIVE SECRETARIAT**Routing Slip**

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15	D/OEA				
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21	NIO/S&T		X		
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Remarks:

Please review and comment to DCI.

[Signature]
Executive Secretary
2 March 1983
Date

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